APPENDIX

APPENDIX A

IN THE COURT OF RECORD OF BROWARD COUNTY, IN AND FOR BROWARD COUNTY, STATE OF FLORIDA, THE 8TH DAY OF JULY, 1966.

CASE No. 66-10011

THE STATE OF FLORIDA

vs.

MORT NORMAN KORAN

INFORMATION FOR COUNTERFEITING DRIVER'S LICENSES

IN THE NAME AND BY THE AUTHORITY OF THE STATE OF FLORIDA:

ALFRED J. SKAF, Acting County Solicitor for the Court of Record of Broward County, State of Florida, charges that

MORT NORMAN KORAN

on the 30th day of June, A. D. 1966, in the County and State aforesaid did then and there unlawfully print, photograph or in some manner make or execute an engraved photograph, print or impression in the similitude of the operator's or chauffeur's licenses issued by the Department of Public Safety, the county judges, or their duly authorized agents, with the intent to sell, issue, publish or utter the same, contrary to the form of the Statute in such cases made and provided, and against the peace and dignity of the State of Florida.

s/ ALFRED J. SKAF
Acting County Solicitor,
Broward County, Florida

COUNTY OF BROWARD,
STATE OF FLORIDA,

Personally appeared before me, ALFRED J. SKAF, Acting County Solicitor for the Court of Record of Broward County, Florida, who, being first duly sworn, says that the allegations as set forth in the foregoing information are based upon facts that have been sworn to as true, and which, if true, would constitute the offense therein charged.

s/ ALFRED J. SKAF
Acting County Solicitor,
Broward County, Florida

Sworn to and subscribed before me this 8th day of July, A. D. 1966.

W. B. DeMilly
Clerk of the Court of Record,
Broward County, Florida

A TRUE COPY
COURT OF RECORD SEAL

By s/ Miriam N. Raye
Deputy Clerk.

To the within Information, defendant pleaded _____

W. B. DeMilly
Clerk of the Court of Record,
Broward County, Florida

By_____
Deputy Clerk.

APPENDIX B

IN THE COURT OF RECORD, IN AND FOR BROWARD COUNTY, FLORIDA

NO. 66-10011

STATE OF FLORIDA,

Plaintiff,

vs.

MORTIMER NORMAN KORAN,

Defendant.

MOTION TO SUPPRESS

COMES NOW the Defendant, MORTIMER NORMAN KORAN, by and through his undersigned attorney, and files this his Motion to Suppress any and all evidence which the prosecution intends to introduce against the Defendant in the forth coming trial of the above entitled cause, which evidence was obtained as a result of an illegal arrest and/or unlawful search and seizure contrary to the Constitution of the State of Florida and the Constitution of the United States of America.

H. ROBERT KOLTNOW and
GERALD KOGAN
Attorneys for Defendant
1201 Biscayne Building
Miami, Florida 33130

BY: Gerald Kogan
GERALD KOGAN

I HEREBY CERTIFY that a copy of the foregoing Motion to Suppress was mailed to ANGELINE G. WEIR, County Solicitor, 201 S. E. 6th Street, Ft. Lauderdale, Florida, this 23rd day of June, 1967.

Gerald Kogan
GERALD KOGAN

APPENDIX C

IN THE COURT OF RECORD IN AND FOR BROWARD COUNTY, FLORIDA.

NO. 66-10011

STATE OF FLORIDA

vs.

MORT NORMAN KORAN

ORDER

THIS CAUSE coming on to be heard upon the Defendant's Motion to Suppress Evidence, and the Court having taken testimony and heard argument, it is, upon consideration,

ORDERED and ADJUDGED that the Defendant's Motion to Suppress Evidence be, and the same is hereby, denied.

DONE and ORDERED at Fort Lauderdale, Broward County, Florida, this 19th day of July, 1967.

RAYMOND J. HARE
JUDGE, COURT OF RECORD

A TRUE COPY

Copy furnished:

B. Paul Pettie, Asst. County Solicitor
Gerald Kogan, attorney for Defendant

APPENDIX D

On the 3rd day of November, 1967, excerpts from Court of Record Minute Book 181, Page 541, reciting the Judgment of the Court in that cause styled STATE OF FLORIDA vs. MORT NORMAN KORAN, Case No. 66-10011, recorded in words and figures as follows:

". . . . Whereupon, the Court proceeded as follows:

> You, Mort Norman Koran, having been found guilty by the Jury of the crime of Counterfeiting Driver's License, the Court now adjudges you to be guilty of said crime. It is,
>
> Ordered and Adjudged that imposition of sentence be hereby deferred until Tuesday, November 21, 1967 at 11:00 A. M., and you are hereby released on the same bond pending Sentencing.
>
> RAYMOND J. HARE
> Judge . . . ."

APPENDIX E

IN THE COURT OF RECORD, IN AND FOR BROWARD COUNTY, FLORIDA.

NO. 66-10011

STATE OF FLORIDA,

Plaintiff,

vs.

MORTIMER NORMAN KORAN,

Defendant.

MOTION FOR NEW TRIAL

COMES NOW the Defendant, MORTIMER NORMAN KORAN, by and through his undersigned attorneys, and moves this Honorable Court for a new trial on the following grounds:

1. That the verdict is contrary to the law.

2. That the verdict is contrary to the evidence.

3. That the verdict is contrary to the law and the evidence.

4. That the Court erred in denying the Defendant's Motion to Suppress all evidence, taken as the result of an illegal search and seizure, and introduced against the Defendant in the trial of this cause, including confessions, statements against interest, electronic recordings of telephone and other conversations, and all evidence seized from the Defendant's place of business in Hallandale, Florida.

5. That the Court erred in denying the Defendant's Motion for a Directed Verdict of Acquittal both at the close of the State's case and at the conclusion of the case.

H. ROBERT KOLTNOW &
GERALD KOGAN
Attorneys for Defendant
1201 Biscayne Building
Miami, Florida 33130

BY: Gerald Kogan

I HEREBY CERTIFY that a copy of the foregoing Motion for New Trial was mailed to B. PAUL PETTIE, JR., Assistant County Solicitor, 201 S. E. 6th Street, Ft. Lauderdale, Florida this 6th day of November, 1967.

Gerald Kogan
GERALD KOGAN

APPENDIX F

On the 21st day of November, 1967, excerpts from Court of Record Minute Book 183, Page 297, reciting the Order Denying Motion for New Trial in that cause styled STATE OF FLORIDA vs. MORT NORMAN KORAN, Case No. 66-10011, recorded in words and figures as follows:

". . . . Thereupon, the Defendant's Motion for New Trial was Denied as follows: It is

> Ordered and Adjudged that the Defendant's Motion for New Trial be, and the same is hereby Denied.

RAYMOND J. HARE,
Judge . . . ."

APPENDIX G

On the 21st day of November, 1967, excerpts from Court of Record Minute Book 183, Page 297, reciting the Sentencing in that cause styled STATE OF FLORIDA vs. MORT NORMAN KORAN, Case No. 66-10011, recorded in words and figures as follows:

". . . . This case being called for Sentencing, the Defendant was present in open Court with his Attorney, the Honorable Gerald Kogan. Sentence having been deferred on November 3, 1966, the Court proceeded as follows:

> What have you to say why sentence should not be imposed upon you? Saying nothing sufficient, it is
>
> The Judgment of the Court and the Sentence of the Law that you be imprisoned by confinement at hard labor in the State Prison for a term of eight (8) years; five (5) years of which sentence is to run concurrently with the sentence previously imposed in Federal Court in Dade County.
>
> RAYMOND J. HARE,
> Judge . . . ."

APPENDIX H

IN THE COURT OF RECORD, IN AND FOR BROWARD COUNTY, FLORIDA

NO. 66-10011

(Filed November 22, 1967)

STATE OF FLORIDA,

Plaintiff,

vs.

MORT NORMAN KORAN,

Defendant.

NOTICE OF APPEAL

NOTICE is hereby given that MORT NORMAN KORAN, Defendant, by his undersigned attorneys, hereby appeals to the Fourth District Court of Appeal of Florida, from the Final Judgment entered in this proceeding on the 3rd day of November, 1967, wherein the said Defendant was adjudicated guilty of the offense alleged in the Information herein, after a plea of not guilty to said Information and a Jury Trial, and was sentenced to a term of eight years (5 years concurrent with Federal). All parties to said cause are called upon to take notice of the entry of this appeal.

DATED this 21 day of November, 1967.

GERALD KOGAN and
H. ROBERT KOLTNOW
Attorneys for Defendant
1201 Biscayne Building
Miami, Florida 33130

BY /s/ GERALD KOGAN

I HEREBY CERTIFY that a copy of the foregoing Notice of Appeal was mailed to B. PAUL PETTIE, JR., Assistant County Solicitor, 201 S. E. 6th Street, Ft. Lauderdale, Florida this 21 day of November, 1967.

/s/ GERALD KOGAN

APPENDIX I

IN THE COURT OF RECORD, IN AND FOR BROWARD COUNTY, FLORIDA.

NO. 66-10011

STATE OF FLORIDA, *Plaintiff,*

vs.

MORT NORMAN KORAN, *Defendant.*

ASSIGNMENTS OF ERROR, DIRECTIONS TO CLERK, DESIGNATION OF NECESSARY PARTS OF TRANSCRIBED TESTIMONY

ASSIGNMENTS OF ERROR

The Defendant, by his undersigned attorneys, makes the following Assignments of Error upon which he will rely for reversal of the Verdict, Judgment and Sentence herein:

1. The Court erred in denying Defendant's Motion To Quash Information.

2. The Court erred in denying Defendant's Motion To Suppress Evidence taken as the result of an illegal search and seizure, and introduced against the Defendant in the Trial of this cause, including confessions, statements against interest, electronic recordings of telephone and other conversations, and all evidence taken from the Defendant's place of business in Hallandale, Florida.

3. The Court erred in denying Defendant's Motions for Directed Verdicts of Acquittal both at the close of the State's case and at the conclusion of the entire case.

4. The Court erred in denying Defendant's Motion for New Trial.

DIRECTIONS TO CLERK

Defendant, by his undersigned attorneys, as and for his Directions to the Clerk in making up the Transcript of Record On Appeal in this case, the following should be included:

1. Information
2. Plea of Defendant
3. Motion To Quash Information
4. Order Denying Motion To Quash Information (Minutes)
5. Motion To Suppress
6. Order Denying Motion To Suppress
7. Reporter's Transcript of Testimony on Motion To Suppress to be supplied later.
8. Reporter's Transcript of Testimony on Trial to be supplied later.
9. Verdict, Judgment and Sentence
10. Motion For New Trial
11. Order Denying Motion For New Trial (Minutes)
12. Notice of Appeal
13. These Assignments of Error and Directions to Clerk
14. All Exhibits introduced at Trial

DESIGNATION OF NECESSARY PARTS OF TRANSCRIBED TESTIMONY

Defendant, by his undersigned attorneys, as and for his Designation Of Necessary Parts Of Transcribed Testimony herein, directs that the entire Transcript of the Trial, omitting Voir Dire and Closing Arguments, together with a Transcript of the Testimony on the Motion To Suppress, be included as part of the original Record herein.

H. ROBERT KOLTNOW and
GERALD KOGAN
Attorneys for Defendant
1201 Biscayne Building
Miami, Florida 33130

BY /s/ H. ROBERT KOLTNOW

I HEREBY CERTIFY that a copy of the above Assignments Of Error, Directions To Clerk, Designation Of Necessary Parts Of Transcribed Testimony, was mailed to ANGELINE G. WEIR, County Solicitor, 201 S. E. 6th Street, Ft. Lauderdale, Florida, this 11th day of December, 1967.

/s/ H. ROBERT KOLTNOW

APPENDIX J

District Court of Appeal of Florida.
Fourth District.

Feb. 14, 1969.

No. 1835.

MORT NORMAN KORAN,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

Rehearing Denied March 21, 1969.

PER CURIAM.

[1,2] Affirmed. The record discloses that defendant was sufficiently informed of his constitutional rights after being taken into custody and prior to interrogation, and that the defendant freely and intelligently gave unequivocal and specific consent to the search of his premises. The evidence obtained through such interrogation and search was properly admissible. The tape recording evidence obtained from the use of electronic transmitting and recording devices was not obtained in violation of any of defendant's constitutional rights nor was such evidence obtained in violation of any state or federal statute, and was therefore properly admitted. Miranda v. Arizona, 1966, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694; Lopez v. United States, 1963, 373 U.S. 427, 83 S.Ct. 1381, 10 L.Ed.2d 462; Rathbun v. United States, 1957, 355 U.S.

107, 78 S.Ct. 161, 2 L.Ed.2d 134; On Lee v. United States, 1952, 343 U.S. 747, 72 S.Ct. 967, 96 L.Ed. 1270; Koran v. State, Fla. App.1968, 213 So.2d 735; Hajdu v. State, Fla. App.1966, 189 So.2d 230; Barber v. State, Fla.App.1965, 172 So.2d 857; Gomien v. State, Fla.App.1965, 172 So.2d 511.

WALDEN, C. J., and REED and OWEN, JJ., concur.

APPENDIX K

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA — FOURTH DISTRICT — JANUARY TERM 1969

CASE NO. 1835.

March 21, 1969.

MORT NORMAN KORAN,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

ORDERED that appellant's petition for rehearing, filed March 3, 1969, is hereby denied.

A TRUE COPY
DISTRICT COURT OF APPEAL SEAL
/s/ Evelyn R. Flack
EVELYN R. FLACK
CLERK

cc: H. Robert Koltnow and Gerald Kogan, Esqs.
James M. Adams, Esq.

APPENDIX L

IN THE SUPREME COURT OF FLORIDA — JANUARY TERM, A. D. 1969 — MONDAY, JUNE 9, 1969

CASE NO. 38,489

MORTIMER NORMAN KORAN,

Petitioner,

vs.

THE STATE OF FLORIDA,

Respondent.

DISTRICT COURT OF APPEAL,
FOURTH DISTRICT

This cause having heretofore been submitted to the Court on Petition for Writ of Certiorari, jurisdictional briefs and portions of the record deemed necessary to reflect jurisdiction under Florida Appellate Rule 4.5 c (6), and it appearing to the Court that it is without jurisdiction, it is ordered that the Petition for Writ of Certiorari be and the same is hereby denied.

A True Copy

Supreme Court of Florida Seal

TEST:

/s/ Sid J. White
Sid J. White
Clerk Supreme Court.

CC: Hon. Evelyn R. Flack
Hon. W. B. DeMilly
Messrs. Gerald Kogan & H. Robert Koltnow
Hon. Earl Faircloth
Hon. James M. Adams, West Palm Beach

APPENDIX M

IN THE SUPREME COURT OF FLORIDA — JULY TERM, A. D. 1969 — FRIDAY, JULY 11, 1969

CASE NO. 38,489

MORTIMER NORMAN KORAN,

Petitioner,

vs.

THE STATE OF FLORIDA,

Respondent.

Petition for rehearing is hereby denied, and it is further ORDERED that petitioner's motion to stay mandate is granted and proceedings in this Court and in the lower courts are hereby stayed to and including August 11, 1969, to allow petitioner to seek review in the Supreme Court of the United States and obtain any further stay from that court.

A True Copy

Supreme Court of Florida Seal

TEST:

/s/ Sid J. White
Sid J. White

Clerk Supreme Court.

cc: Messrs. Gerald Kogen and H. Robert Koltnow
Honorable Earl Faircloth
Honorable Evelyn R. Flack
Honorable W. B. DeMilly

APPENDIX N

District Court of Appeal of Florida.
Third District.

No. 67-1021.

Aug. 20, 1968.

MORTIMER NORMAN KORAN,

Appellant,

v.

THE STATE OF FLORIDA,

Appellee.

Rehearing Denied Sept. 24, 1968.

Before BARKDULL, HENDRY and SWANN, JJ.

SWANN, Judge.

The defendant below, Mortimer Norman Koran, was charged by information in Dade County, Florida, with the unlawful possession of counterfeit driver's licenses in violation of Fla.Stat. § 322.212(1), F.S.A.

He was found guilty, by a jury, on June 20, 1967, and appeals from his judgment and sentence rendered November 30, 1967 for a term of three years in the state penitentiary.

His first point concerns an alleged violation of his constitutional rights by the introduction into evidence of certain tape recordings which were obtained by govern-

ment agents using electronics surveillance devices. The recorded conversations were played before the jury after their authenticity had been established.

A part of the tape recording, which was generally objected to by the defendant, had been obtained by an undercover agent, one Rivers, who was wired with a microphone and radio transmitter while conversing with the defendant concerning certain criminal activities. These conversations between the undercover agent and the defendant took place under a bridge in Dade County, Florida. They were transmitted to a building nearby where other agents recorded the conversations. The tape also consisted of a recording of several telephone conversations between the defendant and Rivers, and was used to corroborate the direct testimony of Rivers.

Appellant relies heavily on a recent decision of the United States Supreme Court. See Katz v. United States, 389 U.S. 347, 88 S.Ct. 507, 19 L.Ed.2d 576 (1967), decided and released after the trial and judgment rendered in this case.

[1] In Florida, generally, sound recorded evidence of oral conversation is admissible into evidence provided that a satisfactory degree of authenticity has been achieved; Gomien v. State, Fla.App.1965, 172 So.2d 511, and where, as here, the person causing the recording to be made is the one whose actual testimony is sought to be corroborated by the recording. Hajdu v. State, Fla.App. 1966, 189 So.2d 230.

[2] The recording of the oral conversation between the agent Rivers and the defendant was taken with the

consent of one of the parties, Rivers. It was admissible under state law (Gomien and Hajdu, supra) and under federal law. Lopez v. United States, 373 U.S. 427, 83 S.Ct. 1381, 10 L.Ed.2d 462 (1963).

As Justice White, in his concurring opinion in Katz, supra, stated:

* * * * * *

> "In previous cases, which are undisturbed by today's decision, the Court has upheld, as reasonable under the Fourth Amendment, admission at trial of evidence obtained (1) by an undercover police agent to whom a defendant speaks without knowledge that he is in the employ of the police, Hoffa v. United States, 385 U.S. 293, 87 S.Ct. 408, 17 L.Ed.2d 374 (1966); (2) by a recording device hidden on the person of such an informant, Lopez v. United States, 373 U.S. 427, 83 S.Ct. 1381, 10 L.Ed.2d 462, (1963); Osborn v. United States, 385 U.S. 323, 87 S.Ct. 429, 17 L.Ed.2d 394, (1966); and (3) by a policeman listening to the secret microwave transmissions of an agent conversing with the defendant in another location, On Lee v. United States, 343 U.S. 747, 72 S.Ct. 967, 96 L.Ed. 1270 (1952). When one man speaks to another he takes all the risks ordinarily inherent in so doing, including the risk that the man to whom he speaks will make public what he has heard. The Fourth Amendment does not protect against unreliable, (or law-abiding) associates. Hoffa v. United States, supra. It is but a logical and reasonable extension of this principle that a man take the

> risk that his hearer, free to memorize what he hears for later verbatim repetitions, is instead recording it or transmitting it to another. The present case deals with an entirely different situation, for as the Court emphasizes the petitioner 'sought to exclude * * * the uninvited ear,' and spoke under circumstances in which a reasonable person would assume that uninvited ears were not listening." [Id, 88 S.Ct. 517, 19 L.Ed.2d 589]

* * * * * *

The admissibility into evidence of the recorded telephone conversations between the undercover agent and the defendant brings into play a separate and distinct set of rules in our opinion. Formerly the federal law generally required that such evidence must be suppressed, upon proper motion, in federal courts but not in state courts. Schwartz v. State of Texas, 344 U.S. 199, 73 S.Ct. 232, 97 L.Ed. 231 (1952).

In Katz, supra, the U.S. Supreme Court overruled its earlier decisions of Olmstead v. United States, 277 U.S. 438, 48 S.Ct. 564, 72 L.Ed. 944, 66 A.L.R. 376 (1928) and Goldman v. United States, 316 U.S. 129, 62 S.Ct. 993, 86 L.Ed. 1322 (1942). It announced that a defendant in federal court charged with violation of a federal statute was protected by the Fourth Amendment to the Federal Constitution and that his federal constitutional rights were violated by the actions of F.B.I. agents in attaching an electronic listening device to a public telephone booth and introducing a recording of such private conversations into evidence over proper objections.

In the instant case one of the parties to the recorded telephone conversations consented to the recording and permitted a recording device to be attached to the telephone. This distinguishes the facts herein from Katz, supra. See Griffith v. State, Fla.App.1959, 111 So.2d 282; and Barber v. State, Fla.App.1965, 172 So.2d 857.

[3] The defendant in the instant cause made no specific objections in the trial court that the introduction of these tape recordings into evidence violated *his constitutional rights.* Generally, specific objections to the introduction of evidence must be raised in the court below in order to be properly considered on appeal.

Since specific objections on these grounds were not raised by the defendant in the court below, and since there is no judicial authority for applying Katz retroactively, and inasmuch as there has been no adjudication that Katz applies in state courts, we reject as untimely and unsound defendant's first point for reversal. Parenthetically, we note that no specific objection was made by the defendant to the introduction of the telephone recording on the ground that it violated any federal or state statute. See Lee v. State, 392 U.S. 378, 88 S.Ct. 2096, 20 L.Ed.2d 1166 (U.S. June 17, 1968).

[4] Defendant contends that the trial court erred in permitting references in the opening statement of the prosecution to other collateral offenses allegedly committed by him. This argument is without merit under the circumstances herein. Williams v. State, Fla.1959, 110 So.2d 654; Winkfield v. State, Fla.App.1968, 209 So.2d 468.

[5] Lastly, the defendant seeks reversal because the trial court permitted a Florida Highway Patrolman to qualify as an expert and give his opinion as to the counterfeit driver's licenses. This objection is not substantiated by the record on appeal and no abuse of discretion was committed by the trial judge. See Florala Saw Mill Co. v. Smith, 55 Fla. 447, 46 So. 332 (1908); Florida East Coast Ry. Co. v. Lassiter, 59 Fla. 246, 52 So. 975 (1910).

The judgment herein appealed is, therefore,

Affirmed.

APPENDIX O

United States Court of Appeals Fifth Circuit.

No. 25446.

Jan. 27, 1969.

MORTIMER NORMAN KORAN,

Appellant,

v.

UNITED STATES OF AMERICA

Appellee.

Rehearing and Rehearing En Banc Denied March 28, 1969.

Before GEWIN and BELL, Circuit Judges, and BOOTLE, District Judge.

GEWIN, Circuit Judge:

Mortimer Norman Koran was convicted in the United States District Court for the Southern District of Florida on Counts Three and Five of an indictment charging substantive offenses relating to counterfeit currency.[1] Count

---

[1]The pertinent parts of the statute, 18 U.S.C. § 474 (1964), provide respectively:

> Whoever has in his possession or custody, except under authority from the Secretary of the Treasury or other proper officer, any obligation or other security made or executed, in whole or in part, after the similitude of any obligation or other security issued under the authority of the United States, with intent to sell or otherwise use the same; or
>
> Whoever prints, photographs, or in any other manner makes or executes any engraving, photograph, print, or impression in the likeness of any such obligation or other security, or any part thereof, or sells any such engraving, photograph, print, or impression, except to the United States . . .
>
> Shall be fined not more than $5,000 or imprisoned not more than fifteen years, or both.

The jury returned a verdict of "not guilty" on three additional counts.

Three charged Koran with printing a one dollar silver certificate and Count Five charged him with possession of the certificate. He was sentenced to five years imprisonment on each count, the sentences to run concurrently. We affirm the judgment of conviction.

Appellant Koran urges that his fourth amendment rights were violated by the introduction at his trial of evidence obtained through the use of electronic listening and recording devices. The evidence challenged consisted of (1) the testimony of an investigator, (2) the tape recordings of certain telephone conversations, and (3) the tape recordings of certain non-telephonic conversations. The investigator, Secret Service Agent Rivers, testified that he overheard a conversation between the appellant and a government informer, Schatzabel, in which the appellant discussed plans for printing a large quantity of counterfeit currency. The conversation took place in the appellant's printing establishment while Agent Rivers, stationed a short distance away, listened to the conversation over a radio which received transmissions from a device concealed in Schatzabel's shirt pocket. The tapes of telephone conversations which were received in evidence were recordings of communications between the appellant and Schatzabel and between the appellant and Agent Rivers, who acted incognito as a prospective buyer of counterfeit merchandise. These conversations were recorded by a device attached to the telephone used by Schatzabel and Rivers, both of whom consented to the recording of the conversations. The non-telephonic tapes were recordings of two conversations between Agent Rivers and appellant Koran which took place beneath a bridge. On both occasions, Rivers was equipped with a transmitter when he met with the appellant. The conversations were recorded by another agent who was posted nearby.

Prior decisions of this court, as well as decisions of the Supreme Court, have approved the use of evidence obtained by the methods employed in this case.[2] The appellant contends, however, that the Supreme Court in *Katz v. United States*[3] charted a new course which demands disapproval of such investigative techniques. He points particularly to the Court's pronouncement in *Katz* that "[w]hat a person knowingly exposes to the public, even in his own home or office, is not a subject of Fourth Amendment protection. . . . But what he seeks to preserve as private, even in an area accessible to the public, may be constitutionally protected."[4] The appellant asserts that, since he was unaware of the presence of electronic listening and recording devices, he did not *knowingly* expose to the public his private conversation.

This court has previously concluded that *Katz* leaves undisturbed the established law applicable to the methods of investigation employed in this case.[5] And in a recent opinion, the Tenth Circuit reached the same conclusion,[6]

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[2]Lopez v. United States, 373 U.S. 427, 83 S.Ct. 1381, 10 L.Ed.2d 462 (1963); On Lee v. United States, 343 U.S. 343 U.S. 747, 72 S.Ct. 967, 96 L.Ed. 1270 (1952); Harris v. United States, 400 F.2d 264 (5th Cir. 1968); Handsford v. United States, 390 F.2d 373 (5th Cir. 1968); Dryden v. United States, 391 F.2d 214 (5th Cir. 1968); Dancy v. United States, 390 F.2d 370 (5th Cir. 1968); Beatty v. United States, 377 F.2d 181 (5th Cir.), *rev'd on other grounds*, 389 U.S. 45, 88 S.Ct. 234, 19 L.Ed.2d 48 (1967); Hurst v. United States, 370 F.2d 161 (5th Cir. 1967).

[3]389 U.S. 347, 88 S.Ct. 507, 19 L.Ed.2d 576 (1967).

[4]389 U.S. at 351, 88 S.Ct. at 511, 19 L.Ed.2d at 582.

[5]Dryden v. United States, 391 F.2d 214, 215 (5th Cir. 1968); Dancy v. United States, 390 F.2d 370, 371 (5th Cir. 1968); Long v. United States, 387 F.2d 377, 378 n. 1 (5th Cir. 1967). *See* Harris v. United States, 400 F.2d 264 (5th Cir. 1968); Handsford v. United States, 390 F.2d 373 (5th Cir. 1968).

[6]Holt v. United States, 404 F.2d 914 (10th Cir. 1968).

emphasizing the language of Mr. Justice White's concurrence in *Katz:*

> When one man speaks to another he takes all the risks ordinarily inherent in so doing, including the risk that the man to whom he speaks will make public what he has heard. . . . It is but a logical and reasonable extension of this principle that a man take the risk that his hearer, free to memorize what he hears for later verbatim repetitions, is instead recording it or transmitting it to another.[7]

Government agents in *Katz* had attached electronic listening equipment to the top of a telephone booth. When the defendant used the booth in making calls, the agents overheard his end of the conversations. The Supreme Court held that, since the search did not comply with constitutional standards, the evidence of the conversations was not admissible.

[1] The attempt to equate the case *sub judice* with *Katz* must fail. It is true that appellant Koran did not wish to expose his words to the public. However, this fact alone does not suffice, for no criminal desires public exposure of his surreptitious activity. The crucial fact here is that the appellant knowingly took the risk that his conversants might expose his statements. Therefore, he cannot now complain that his conversants did in fact expose the conversations. In *Katz*, on the other hand, exposure of the defendant's private conversation was unaided by his conversant. Instead, exposure resulted from circumstances unrelated to the risk which the defendant

[7] 389 U.S. at 363 n. 1, 88 S.Ct. at 517, 19 L.Ed.2d at 589 n. 1.

knowingly took when he spoke to his conversant. Thus we think it clear that the appellant's reliance upon *Katz* is misplaced.[8]

[2] The appellant argues that Agent Rivers' testimony relating to the conversation he overhead between the appellant and Schatzabel as they talked in the appellant's shop was nevertheless improper because it was unsupported by testimony from Schatzabel, who did not testify. This contention is without merit. The absence of supporting testimony from Schatzabel would have significance only if there existed a complete lack of evidence identifying the appellant as the party with whom Schatzabel conversed. Although Agent Rivers from his listening post could not visually observe the participants in the conversation, the record establishes beyond dispute that the appellant was one of the parties.

[3] The statute which the appellant was convicted of violating proscribes the printing of currency and the possession of counterfeit currency "except under authority from the Secretary of the Treasury or other proper officer."[9] The appellant contends that the Government did not prove his lack of authority and, therefore, failed to prove all the elements of the offense charged. While the Government offered no direct proof of the appellant's lack of

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[8]We are, of course, aware that our analysis of *Katz* is in conflict with a Seventh Circuit decision. In United States v. White (7th Cir. 1968), *upheld on rehearing en banc*, 405 F.2d 838 (7th Cir. 1969), the court held that mere existence of the need to use informers and secret devices to obtain information from a defendant is a clear indication that the defendant seeks to exclude the uninvited ear and, consequently, that this method of investigation violates the defendant's fourth amendment rights. As indicated by our discussion, we do not believe the reach of *Katz* extends so far as the Seventh Circuit suggests.

[9]See note 1 *supra*.

authority, it did present evidence from which the jury could reasonably infer that he had no authority.[10] Agent Rivers, for example, testified:

> He [the appellant] indicated to me he had something to [show] me and I said well, let me look at it. He said, well, I'm not going to show it to you out here in the open.
>
> I says well, let me look at it. So he handed it to me and I opened it up and it was a $1.00 Silver Certificate oversized.
>
> Q Did you have any conversations with him regarding that $1.00 Silver Certificate that he handed you on that occasion?
> A Yes. He indicated I should get in the car with him to look at this thing in private, which I did.
>
> He stated that he had this at home and he had made it the night before and said he made it oversized just to show its detail which would prove his being a good printer.

If the jury believed the broad thrust of the testimony of the witnesses—which it obviously did—the inference was compelled that the appellant had no authority to print currency or to possess counterfeit currency.

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[10]Since we conclude that the Government presented sufficient evidence to support a finding that the appellant lacked authority, we do not reach the question raised in the briefs of whether proving lack of authority is a burden carried by the Government of a defense which the defendant must raise.

[4-6] Appellant Koran next contends that the trial court erred in permitting references during the prosecutor's opening statement and in the evidence throughout the trial to the appellant's unlawful printing of title certificates and driver's licenses as a part of the same venture which produced the counterfeit currency. Generally, evidence of crimes not charged in the indictment is inadmissible. However, we believe that the evidence in question falls within a widely recognized exception to the general rule which permits such evidence if it tends to prove a common scheme, plan or design on the part of the defendant so closely related to the offense charged that it may serve to establish the offense or to establish an intent in the mind of the accused to commit the offense.[11]

[7] The prosecutor, in his opening statement, also made reference to the appellant's *arrest* for counterfeiting title certificates and driver's licenses. In response the appellant moved for a mistrial. The court denied his motion but offered to instruct the jury to disregard the prosecutor's comment; defense counsel, however, preferred not to have the instruction. The appellant contends that a mistrial was mandatory. We think, however, that the court was clearly within the bounds of its discretion in denying the motion.

[8] The appellant makes one contention which is relevant only to his conviction on Count Five of the indictment, the possession count. The statute under which he was convicted makes unlawful the possession of a counterfeit obligation which is after the similitude of an obligation of the United States. The appellant argues that

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[11]Pardo v. United States, 369 F.2d 922, 924 (5th Cir. 1966); Robinson v. United States, 366 F.2d 575, 578 (10th Cir. 1966).

the oversized silver certificate which he is convicted of possessing was not "after the similitude" of a United States silver certificate.[12] However, it is unnecessary for us to reach this contention since the sentences under both counts run concurrently and since we have concluded that the conviction under the printing count is free of error.[13]

The judgment is affirmed.

ON PETITION FOR REHEARING AND PETITION FOR REHEARING EN BANC

PER CURIAM:

The Petition for Rehearing is denied and no member of this panel nor Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc, (Rule 35 Federal Rules of Appellate Procedure; Local Fifth Circuit Rule 12) the Petition for Rehearing En Banc is denied.

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[12]See note 1 *supra*. The statute makes unlawful the *printing* of anything "in the likeness" of an obligation of the United States, without reference to "similitude." The appellant has not raised the likeness question but, even if he had, it would have been to no avail.

> The legislative purpose is clear that Congress intended, in protecting the currency, to tolerate no manipulation in the making of impressions of government obligations or securities, whether the copies or impressions might be good or bad, and regardless of the purpose for which they might be made. . . .
> [T]here is no need of proof that such impressions were calculated to deceive.

Webb v. United States, 216 F.2d 151, 152 (6th Cir. 1954).

[13]Hirabayashi v. United States, 320 U.S. 81, 85, 63 S.Ct. 1375, 87 L.Ed. 1774 (1943); Mishan v. United States, 345 F.2d 790, 791 (5th Cir. 1965). Whether the "concurrent sentence" doctrine enunciated in *Hirabayashi* has continuing validity in light of subsequent decisions will be argued before the Supreme Court on March 24, 1969. See Benton v. Maryland, 393 U.S. 994, 89 S.Ct. 481, 21 L.Ed.2d 460 (1968).